Ore. 583; *L. & N. R. R.* v. *Taylor,* 138 Ky. 437; *Hunter* v. *Carroll,* 64 N. H. 472. Practically, the rule laid down by these courts works out more equitably than would a contrary doctrine, but in strict theory why should the plaintiff in this case be compelled to give up real estate for its value in money? Courts of equity grant specific performance of contracts to convey land, on the ground that the money value in damages is not equivalent to the land. The same proposition would seem to underlie the question involved in the principal case. The cases taking this view are: *Pile* v *Pedrick, 227* Pa. 420; *Rahn* v. *Mil. Elec. R. & L. Co.,* 103 Wis. 467; *Hall* v. *Sugo,* 169 N. Y. 109; and all have been quoted approvingly in more recent cases in the same states. The court in the principal case remarked that the plaintiff had an action at law. This however would probably amount to no more than money damages because it is at least doubtful whether an action in ejectment could be maintained in such a case. *Wachstein* v. *Cristopher,* 128 Ga. 229, 11 L. R. A. (N. S.) 917. (Note). And even though the action was allowed, a sheriff might properly refuse to carry out the decree of the court. *Baron* v *Korn,* 127 N. Y. 224. The later New York cases have adopted what seems to be a very reasonable rule. In *Goldbacher* v. *Eggers,* 179 N. Y. 551, the court said that if defendant would pay certain damages to the plaintiff upon delivery of a deed by the plaintiff, then no injunction would be given; otherwise it would be granted. And in the lower court decision of *Crocker* v. *Manhattan L. Ins. Co.,* 66 N. Y. Supp. 84, the court decreed that defendant should remove the encroaching structure *as soon as* the plaintiff wished to build on the ground.

INSURANCE—ADDITIONAL INSURANCE—RENEWAL OF EXISTING POLICY.—Defendant's policy upon which plaintiff sued, provided that if the property was insured under other contracts, subscribed either before or after the execution of the said policy, the assured was bound to declare it (de le déclarer) and to mention it (de le faire mentionner) either in the policy or in a written endorsement thereon. The assured had at the time concurrent insurances which were duly recorded in the policy. Upon their expiration during the life of the policy in suit these insurances were replaced by insurance in another company for a slightly larger amount, the increase being due to an alleged addition to the value of the property covered. *Held,* That the condition in the policy meant only that the insured should declare the fact that the property covered was further insured, that the plaintiff had committed no breach of this condition, and was entitled to recover on the policy. *National Protector Fire Ins. Co.* v. *Nivert,* (Privy Council.) [1913] A. C. 507.

The decision in the principal case is largely based upon the wording of the policy sued upon. It was held that this did not require that the assured state the date, name of the company, or amount of the concurrent insurance. But in view of a somewhat similar provision in many American policies the case throws light on a question whether a renewal of existing insurance is "other insurance" such as to avoid a policy. The cases seem to be divided upon this point. In *Duclos* v. *Citizens Mutual Ins. Co.,* 23 La. Ann. 332, and in *Healey* v. *Imperial Fire Ins.* Co., 5 Nev. 268, it is held that a renewal is

other insurance such as to avoid a policy. The contrary is held in *Pitney* v. *Glens Falls Ins. Co.*, 65 N. Y. 6; *Lewis* v. *Guardian Ins. Co.*, 87 N. Y. Supp. 525, 93 App. Div. 157, confirmed in 181 N. Y. 392; *New Orleans Ins. Ass'n.* v. *Holberg*, 64 Miss. 51, 8 So. 175. In none of these cases, however, was the amount of the renewal in excess of the insurance existing at the date of the policy.

JUDGMENTS—COLLATERAL ATTACK.—In an action to quiet title to certain lands a decree rendered on service by publication was pleaded in the answer as an adjudication of the said title in favor of the defendant. The affidavit on which such service was based failed to conform to the statutory requirements, the insufficiency of the affidavit affirmatively appearing on the record. *Held*, a decree entered on such service was void and subject to collateral attack.—*Gibson* v. *Wagner*, (Colo. 1913) 136 Pac. 93.

It is the general rule that there must be a strict compliance with statutes providing for servce by publication, since they are in derogation of the common law. *Pennoyer* v. *Neff*, 95 U. S. 714, 24 L. Ed. 565; *Tunis* v. *Withrow*, 10 Ia. 305, 77 Am. Dec. 117; *Week* v. *Rea*, 54 Wash. 424, 103 Pac. 462; *Gilmore* v. *Lampman*, 86 Minn. 493, 90 N. W. 1113, 91 Am. St. Rep. 376. Every fact must be shown in the affidavit which is necessary under the statute to give the right to an order for service by publication, otherwise the judgment is void. *Lumber Co.* v. *Johnson*, 196 Fed. 56; *Norris* v. *Kelsey*, 130 Pac. 1088 (Colo. 1913) See 11 MICH. L. REV. 607. But on collateral attack defects in the affidavit are generally held not to be jurisdictional, and the judgment will be upheld. *Cooper* v. *Reynolds*, 10 Wall, 308; *Matthew* v. *Densmore*, 109 U. S. 216; *Russel* v. *Work*, 35 N. J. L. 316; *Clay* v. *Bilby*, 72 Ark. 101, 78 S. W. 749; *Salisbury* v. *Cooper*, 69 N. Y. S. 258, 58 App. Div. 524; *Burnett* v. *McCluey*, 92 Mo. 230. See 10 MICH. L. REV. 240. But there is a respectable minority holding contra. *Greenvault* v. *Farmers & Mechanics' Bank*, 2 Doug. 498: *Empire Ranch & Cattle Co.* v. *Coldren*, 51 Colo. 115, 117 Pac. 1005. See *Johnson* v. *The North Star Lumber Co.*, 206 Fed. 604. Were it not for the fact that Colorado is committed to the minority view, this might be classed as one of those anomalous cases in which courts have permitted collateral attack to prevent an injustice, for here it appears the want of a proper affidavit had prevented the defendant therein receiving a copy of the summons or learning of the suit. Even in such cases and although the defect in the affidavit appears in the record, considerations of public interests, which are best subserved by a confidence in the stability of judgments, should conduce to the upholding of their validity as against collateral attack. Where opportunity is given by appeal or motion to vacate to set aside a judgment for defects—preliminary in the instant case—and no advantage is taken of the opportunity, the party aggrieved should be precluded from again contesting the validity of the judgment in a collateral proceeding.

MASTER AND SERVANT—CONSTRUCTION OF COMPENSATION ACT.—A claimant under the Workmen's Compensation Act, 1906, was employed as a boatswain on a steam fishing trawler and was remunerated by wages, maintainence, and poundage dependent on the profits of the fishing expedition. It was provid-